

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TAJU AHMED,

Petitioner,

vs.

DAVID KNOWLES,

Respondents.

Civil No. 08-1352 BTM (NLS)

**ORDER DISMISSING HABEAS  
PETITION WITHOUT PREJUDICE  
AS SECOND OR SUCCESSIVE**

On July 26, 2008, Petitioner, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. In this action, Petitioner appears to challenge his San Diego County Superior Court conviction and sentence for first degree murder in Case No. SDC120898. (*See* Petition at 16-23.)

**PRIOR FEDERAL HABEAS PETITIONS DENIED ON THE MERITS**

On January 13, 2000, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in SO. DIST. CA. CIVIL CASE NO. 00cv0084 W (AJB). (*See* Petition in SO. DIST. CA. CIVIL CASE NO. 00cv0084 W (AJB), filed 1/13/00.) In that petition, Petitioner challenged his conviction and sentence in San Diego Superior Court case No. SDC120898. On September 22, 2000, this Court dismissed the petition because Petitioner's claims were procedurally defaulted. (*See* Order filed 9/22/00 in SO. DIST. CA. CIVIL CASE NO. 00cv0084 W (AJB) [doc. no. 22].) Petitioner appealed that determination, and on November 25, 2003 the Ninth Circuit vacated this Court's decision and remanded the case back to this Court for consideration in light of the Ninth Circuit's

1 decision in *Bennett v. Mueller*, 322 F.3d 573 (9th Cir. 2003). (See Order dated 11/25/03 in SO.  
2 DIST. CA. CIVIL CASE NO. 00cv0084 W (AJB) [doc. no. 34].)

3 Following the remand, this Court again dismissed the petition as procedurally defaulted  
4 on October 14, 2004. (See Order filed 10/14/04 in SO. DIST. CA. CIVIL CASE NO. 00cv0084 W  
5 (AJB) [doc. no. 55].) On May 12, 2006, the Ninth Circuit upheld this Court's dismissal. (See  
6 Order filed 5/12/06 in SO. DIST. CA. CIVIL CASE NO. 00cv84 W (AJB) [doc. no. 66].)

### 7 **INSTANT PETITION BARRED BY GATEKEEPER PROVISION**

8 Petitioner is now seeking to challenge the same conviction he challenged in his prior  
9 federal habeas petition. "[A] denial on grounds of procedural default constitutes a disposition  
10 on the merits and thus renders a subsequent § 2254 petition or § 2255 motion 'second or  
11 successive' for purposes of the AEDPA." *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir.  
12 2005), citing *Carter v. United States*, 150 F.3d 202, 205 (2d Cir. 1998) (per curiam). Unless a  
13 petitioner shows he or she has obtained an order from the appropriate court of appeals  
14 authorizing the district court to consider a successive petition, the petition may not be filed in  
15 the district court. See 28 U.S.C. § 2244(b). Here, there is no indication the Ninth Circuit Court  
16 of Appeals has granted Petitioner leave to file a successive petition.

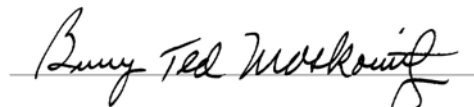
### 17 **CONCLUSION**

18 Because there is no indication Petitioner has obtained permission from the Ninth Circuit  
19 Court of Appeals to file a successive petition, this Court cannot consider his Petition.  
20 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition  
21 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. THE  
22 CLERK OF COURT IS DIRECTED TO MAIL PETITIONER A BLANK NINTH CIRCUIT  
23 APPLICATION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE PETITION.

24 The Clerk shall close the file.

25 **IT IS SO ORDERED.**

26 DATED: August 8, 2008

27 

28 Honorable Barry Ted Moskowitz  
United States District Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28